



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2013–0032]

[FXES11120300000F2–134–FF03E00000]

Draft Environmental Impact Statement, Draft Habitat Conservation Plan, Draft Programmatic Agreement, and Draft Implementing Agreement; Application for an Incidental Take Permit, Fowler Ridge Wind Farm, Benton County, Indiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Fowler Ridge Wind Farm LLC, Fowler Ridge II Wind Farm LLC, Fowler Ridge III Wind Farm LLC, and Fowler Ridge IV Wind Farm LLC, collectively referred to as Fowler Ridge (applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA), for its Fowler Ridge Wind Farm (FRWF) (project). If approved, the ITP would be for a 22-year period and would

authorize the incidental take of an endangered species, the Indiana bat. The applicant has prepared a draft habitat conservation plan (HCP) that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the Indiana bat. The ITP application also includes a draft implementing agreement (IA). We also announce the availability of a draft Environmental Impact Statement (DEIS), which has been prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act (NEPA), and a draft Programmatic Agreement (PA) that has been prepared in response to the permit application in accordance with the National Historic Preservation Act (NHPA). We request public comment on the application and associated documents.

DATES: *Public Meeting:* Thursday, April 18, 2013 from 4 to 8 p.m. local time (EST) at the Benton County Government Annex, 410 South Adeway, Suite A, Fowler, IN. 47944.

Comments: We will accept comments received or postmarked on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:*

- *Internet:* You may obtain copies of the documents on the Internet at <http://www.regulations.gov> (**Docket Number FWS–R3–ES–2013–0032**) or <http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html>.

- *U.S. Mail:* You can obtain the documents by mail from the Indiana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).
- *In-Person:* To view hard copies of the documents in person, go to one of the Ecological Services Offices (8 a.m. to 4 p.m.) listed under **FOR FURTHER INFORMATION CONTACT**, or to one of the following libraries during normal business hours: Benton County Public Library, 765–884 –1720, 102 N. Van Buren Avenue, Fowler, IN 47944; or Otterbein Public Library (www.otterbeinpubliclibrary.org), 765–583–2107, 23 E. 1st Street Otterbein, IN 47970.

Public Meeting: See **DATES**.

Comment submission: In your comment, please specify whether your comment addresses the draft HCP, draft EIS, draft PA, or draft IA, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter **FWS–R3–ES–2013–0032**, which is the docket number for this notice. Then, on the left side of the screen, under the Document Type heading, click on the Notices link to locate this document and submit a comment.
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2013–0032; Division of Policy and Directives

Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS
2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Scott Pruitt, Field Supervisor, Bloomington, Indiana, Ecological Services Field Office, U.S. Fish and Wildlife Service, 620 South Walker Street, Bloomington, IN 47403; telephone: 812–334–4261, extension 214; or Rick Amidon, Fish and Wildlife Biologist, Ecological Services, Midwest Regional Office, U.S. Fish and Wildlife Service, 5600 American Blvd., West, Suite 990, Bloomington, MN 55437–1458; telephone: 612–713–5164.

SUPPLEMENTARY INFORMATION: We have received an application from Fowler Ridge Wind Farm LLC, Fowler Ridge II Wind Farm LLC, Fowler Ridge III Wind Farm LLC, and Fowler Ridge IV Wind Farm LLC, collectively referred to as Fowler Ridge, for an incidental take permit (TE95012A) under the ESA (16 U.S.C. 1531 et seq.). If approved, the ITP would be for a 22-year period and would authorize incidental take of the endangered Indiana bat (*Myotis sodalis*).

The applicant has prepared a draft HCP that covers the operation of Phases I – IV of the project. The project consists of a wind-powered electric generation facility located

in an approximately 72,947-acre area (the project area including a one-half-mile buffer around the outside turbines) in Benton County, Indiana. The draft HCP describes the following: (1) Biological goals and objectives of the HCP; (2) covered activities; (3) permit duration; (4) project area; (5) alternatives to the taking that were considered; (5) public participation; (6) life history of the Indiana bat; (6) quantification of the take for which authorization is requested; (7) assessment of direct and indirect effects of the taking on the Indiana bat within the Midwest Recovery Unit (as delineated in the 2007 Indiana Bat Draft Recovery Plan, Service) and rangewide; (8) a conservation program consisting of avoidance and minimization measures, mitigation, monitoring, and adaptive management; (9) funding for the HCP; (10) procedures to deal with changed and unforeseen circumstances; and (11) methods for ITP amendments.

In addition to the draft HCP, the applicant has prepared a draft IA to document the responsibilities of the parties. The Service invites comment on the IA as well as the applicants' HCP.

Pursuant to the NHPA (16 U.S.C. 470, 470f), the Service has initiated Section 106 consultation with the Indiana State Historic Preservation Office regarding the construction of turbines under Phase IV of the FRWF project and the implementation of mitigation projects in accordance with the terms of the HCP. Sites have not been selected for the Phase IV turbines or for the mitigation. Therefore, future efforts will be required to identify archaeological sites that may be adversely affected by the construction of Phase IV turbines and implementation of mitigation. Following siting of the Phase IV turbines and location of mitigation sites, archaeological surveys will be conducted, with plans and reports submitted to the Indiana State Historic Preservation Office for review.

The draft PA between the Service, Fowler Ridge, and the Indiana State Historic Preservation Office describes the process for conducting the surveys, evaluating the results of the surveys, and determining if resources can be avoided or if additional surveys or mitigation are necessary before the Section 106 process is completed. The final PA will be signed prior to issuance of the EIS Record of Decision. The Section 106 process will be completed and an memorandum of agreement signed prior to construction or mitigation beginning. Public comments are solicited on the content of the draft PA.

Under the NEPA (43 U.S.C. 4321 et seq.) and the ESA, the Service announces that we have gathered the information necessary to:

1. Determine the impacts and formulate alternatives for an EIS related to:
 - a. Issuance of an ITP to the applicant for the take of the Indiana bat, and
 - b. Implementation of the associated HCP; and
2. Evaluate the application for ITP issuance, including the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of the Indiana bat.

Background

The Fowler Ridge application is unusual in that 355 wind turbines are already in place and have been operational since 2009. At the time of their construction, no Indiana bats had been documented to have been killed by a commercial wind facility (the first Indiana bat fatality was found at FRWF during monitoring in 2009). The turbines were constructed in three phases with a total energy capacity of 600 megawatts (MW). The 301.3-MW Fowler Phase I was constructed in 2008 and consists of 40 Clipper Liberty

wind turbine generators (WTG) with a capacity of 2.5 MW per turbine and 122 Vestas V82 WTGs with a capacity of 1.65 MW per turbine. The 199.5-MW Fowler Phase II was constructed in 2009 and began operating later that year. The site consists of 133 GE WTGs, each with a 1.5-MW capacity. The 99-MW Fowler Phase III was constructed in 2008 and began operating in 2009. The site consists of 60 Vestas V82 WTGs, each with a 1.65-MW capacity per turbine. Phase IV will consist of up to 94 GE 1.6-MW turbines for a total capacity of 150.4 MW. Currently, Phase IV is planned for construction in 2014. The need for the proposed action (i.e., issuance of an ITP) is based on finding two dead Indiana bats at the facility, the aforementioned 2009 fatality and another in 2010, and the potential that future operation of FRWF could result in additional take of Indiana bats.

The HCP provides a detailed conservation plan to ensure that the incidental take caused by the operation of the project will not appreciably reduce the likelihood of the survival and recovery of the Indiana bat in the action area or in the recovery unit, and provides mitigation to fully offset the impact of the taking. Further, the HCP provides a long-term monitoring and adaptive management strategy to ensure that the ITP terms are satisfied, and to account for changed and unforeseen circumstances.

Purpose and Need for Action

In accordance with NEPA, the Service has prepared an EIS to analyze the impacts to the human environment that would occur if the requested ITP were issued and the associated HCP were implemented.

Proposed Action

Section 9 of the ESA prohibits the “taking” of threatened and endangered species. However, provided certain criteria are met, the Service is authorized to issue permits under section 10(a)(1)(B) of the ESA for take of federally listed species when, among other things, such a taking is incidental to, and not the purpose of, otherwise lawful activities. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our implementing regulations define “harm” as an act which actually kills or injures wildlife, and such act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Harass, as defined, means “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3).

The HCP analyzes, and the ITP would cover, take from harassment, harm, and killing of bats due to the operation of the FRWF project. If issued, the ITP would authorize incidental take consistent with the applicant’s HCP and the ITP. To issue the ITP, the Service must find that the application, including its HCP, satisfies the criteria of section 10(a)(1)(B) of the ESA and the Service’s implementing regulations at 50 CFR parts 13 and 17.22. If the ITP is issued, the applicant would receive assurances under the Service’s No Surprises policy, as codified at 50 CFR 17.22(b)(5).

The applicant proposes to construct 94 turbines under Phase IV and operate a maximum of 449 wind turbines and associated facilities (described below) for a period of 22 years in Benton County, Indiana. The project will consist of wind turbines, associated access roads, an underground and aboveground electrical collector system, four substations (one for each phase of the project) containing six transformers that feed electricity into an existing 345-kilovolt (kV) electrical tie-in line (roughly 200 poles carrying electricity approximately 50 km (31 mi) to the existing Dequine Substation in Tippecanoe County), seven permanent un-guyed 80-m tall meteorological towers, and an operations and maintenance building. Project facilities and infrastructure will be placed on private land via long-term easement agreements between the applicant and respective landowners.

While approximately 6,400 acres are located within the Phase IV project area, a relatively small portion of that land, approximately 554 acres, will be disturbed, and only 78.2 acres will be permanently occupied by the Phase IV facilities. The FRWF project area is 93-percent row crop agriculture. Phases I–III have been in operation since 2009 within this agricultural context. Beyond the area required for construction, Phase IV is not expected to change current land use.

The draft HCP describes the impacts of take associated with the operation of the FRWF and includes measures to avoid, minimize, mitigate, and monitor the impacts of incidental take on the Indiana bat. The applicant will mitigate for take and associated impacts through protection of a Priority 1 hibernaculum and restoration and protection of maternity colony habitat at one or more documented maternity colonies. Maternity colony habitat mitigation, including any restored habitat, will occur on private land and

be permanently protected by restrictive covenants approved by the Service. Chapter 5 of the HCP describes the Conservation Program, including details of avoidance and minimization measures, compensatory mitigation, and adaptive management that will limit and mitigate for the take of Indiana bats.

The Service is soliciting information regarding the adequacy of the HCP to avoid, minimize, mitigate, and monitor the proposed incidental take of the covered species and to provide for adaptive management. In compliance with section 10(c) of the ESA (16 U.S.C. 1539(c)), the Service is making the ITP application materials available for public review and comment as described above.

We invite comments and suggestions from all interested parties on the draft documents associated with the ITP application (HCP, HCP Appendices, and IA), and request that comments be as specific as possible. In particular, we request information and comments on the following topics:

1. Whether adaptive management and monitoring provisions in the Proposed Action alternative are sufficient;
2. Any threats to the Indiana bat that may influence its population over the life of the ITP that are not addressed in the draft HCP or draft EIS;
3. Any new information on white-nose syndrome effects on the Indiana bat;
4. Any other information pertinent to evaluating the effects of the proposed action on the Indiana bat.

Alternatives in the Draft EIS

The DEIS contains an analysis of four alternatives: (1) No Action alternative, in

which all 449 turbines would be shut down (i.e., non-operational) from sunset to sunrise from August 1 through October 15, the primary fall migratory period of the Indiana bat, each year during the operational life (22 years) of the FRWF; (2) The 3.5 m/s Cut-In Speed (Feathered) Alternative, including implementation of the HCP and issuance of a 22-year ITP; (3) the 5.0 m/s Cut-In Speed (Feathered) Alternative, including implementation of the HCP and issuance of a 22-year ITP; and (4) the 6.5 m/s Cut-In Speed (Feathered) Alternative, including implementation of the HCP and issuance of a 22-year ITP. The DEIS considers the direct, indirect, and cumulative effects of the alternatives, including any measures under the Proposed Action alternative intended to minimize and mitigate such impacts. The DEIS also identifies five additional alternatives that were considered but were eliminated from consideration (detailed in Section 3.1 of the DEIS).

The Service invites comments and suggestions from all interested parties on the content of the DEIS. In particular, information and comments regarding the following topics are requested:

1. The direct, indirect, or cumulative effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
3. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Public Comments

You may submit your comments and materials concerning the notice by one of the methods listed in **ADDRESSES**. We request that you send comments only by one of the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as documents associated with the notice, will be available for public inspection on <http://www.regulations.gov> at **Docket No. FWS–R3–ES–2013–0032**, or by appointment, during normal business hours, at the Indiana Ecological Services Field Office in Bloomington, Indiana (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR Part 46), and the NHPA (16 U.S.C. 470 *et seq.*) and its implementing regulations (36 CFR 800).

Dated: March 20, 2013

**Lynn Lewis,
Assistant Regional Director,
Ecological Services,
Midwest Region.**

[FR Doc. 2013-07595 Filed 04/04/2013 at 8:45 am; Publication Date: 04/05/2013]